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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 122

CHICOT COUNTY DRAINAGE DISTRICT.....*Petitioner*

v.

THE BAXTER STATE BANK AND

MRS. LENA S. SHIELDS.....*Respondents*

**SUPPLEMENTAL BRIEF IN SUPPORT
OF PETITION FOR WRIT OF
CERTIORARI**

JAMES R. YERGER,
GROVER T. OWENS,
S. LASKER EHRLMAN,
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Counsel for Petitioner.

SUPPLEMENTAL BRIEF

In our brief in support of the petition we argued on pages 22 to 24 that the First Municipal Bankruptcy Act was valid insofar as its application to Chicot County Drainage District was concerned. On page 24 of our brief we cited the case of *In Re Drainage District No. 7 of Poinsett County, Arkansas*, 21 Fed. Sup. 798, this case being a decision by the United States District Court. Since our brief was filed the Circuit Court of Appeals for the Eighth Circuit handed down an opinion on appeal of the above cited case. This opinion is reported under the style of *Luehrmann v. Drainage District No. 7 of Poinsett County, Arkansas*, 104 Fed. (2d) 696. This opinion by the Circuit Court of Appeals brings out the contention of petitioner very clearly.

In that case an attack had been made upon the constitutionality of the Second Municipal Bankruptcy Act, 50 Stat. 654, 11 U. S. C. A., paragraphs 401-404, and in sustaining the constitutionality of the act as applied to the case at issue, the court pointed out the difference between Drainage District No. 7 of Poinsett County, Arkansas, and the Water Improvement District which was involved in the case of *Ashton v. Cameron County Water Improvement District*, 298 U. S. 513; 56 S. Ct. 892, 80 L. Ed. 1309. The court pointed out that the Drainage District did not fall within the limitation of the bankruptcy power, which limitation was declared in the *Ashton* case, to-wit, that as applied to the district in question, it constituted an interference with the fiscal affairs of the state.

The status of Drainage District No. 7 of Poinsett County, Arkansas, is identical to that of Chicot County

Drainage District of Chicot County, Arkansas. They were both created for drainage purposes and both have the same inherent powers. Under the decisions of the Supreme Court of Arkansas hereinbefore cited, neither is a political sub-division of the State of Arkansas, and therefore the reasoning behind the decision in the Ashton case would not apply to either of these districts.

In Point "A" of our brief it was argued that when Chicot County Drainage District filed its petition in the United States District Court under the First Municipal Bankruptcy Act, the court was called upon to decide, first, whether or not it had jurisdiction to decide the matter in controversy, and, second, whether or not a cause of action was stated upon which relief could be granted, and that the determination of either of those questions was an exercise of jurisdiction and binding upon the parties in the absence of an appeal. In other words, the judgment of that court became *res judicata*. We failed to cite a recent decision of this court which, we submit, supports our position. The case of *Stoll v. Gottlieb*, 305 U. S. 165, 83 L. Ed. 116, decided November 21, 1933, involved the conclusiveness of an order of the United States District Court releasing the guarantor from his obligations in a proceeding under Section 77(b) of the Bankruptcy Act. The Supreme Court of the State of Illinois had refused to recognize the binding effect of the order of the United States District Court on the theory that the court was without jurisdiction to render the order in question. On writ of certiorari to this court, the decision of the Supreme Court of Illinois was reversed. In an opinion delivered by Mr. Justice Reed, the court said:

"A court does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creators. There must be admitted, however, a power to interpret the language of the jurisdictional instrument and its application to an issue before the court. * * * After a Federal court has decided the question of the jurisdiction over the parties as a contested issue, the court in which the plea of res judicata is made has not the power to inquire again into that jurisdictional fact. * * * "

"* * * It is just as important that there should be a place to end as that there should be a place to begin litigation. After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined."

It is submitted that the above case is directly in point with the issue to be decided in the case at bar.

Respectfully submitted,

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